

200719019



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FEB 15 2007

U.I.L. 408.03-00

T:EP:RA:TZ

Legend:

Taxpayer A =
IRA X =
Company H =
Company S =
Account F =
Individual L =
Individual M =
Amount D =

Dear :

This is in response to your letter dated August 16, 2006, as supplemented by correspondence dated October 18, 2006, November 29, 2006, December 27, 2006, January 2, 2007, and February 12, 2007, submitted by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A, maintained an individual retirement arrangement, IRA X, with Company H. Taxpayer A states that, in early 2005, she decided to move her investment accounts, including IRA X, from Company H to Company S.

Documentation submitted by Taxpayer A shows that on March 29, 2005, she signed a Company H surrender request form with box three checked instructing Company H to wire transfer the IRA X surrender amount to an account at Company H. (The explanation for this option indicates that it is only available for deposits into checking and savings accounts). Individual L is named on the surrender request form as the contact person at Company S. Documentation submitted by Taxpayer A also shows that Amount D was deposited into Account F at Company S on April 11, 2005. Account F is described as a regular brokerage account that Taxpayer A already maintained with Company S.

Taxpayer A represents that in January 2006, she received a Form 1099-R from Company H indicating that a normal taxable distribution from IRA X was made in 2005. Taxpayer A states that she contacted Company S about the status of the account and was informed that Amount D had been placed in Taxpayer A's regular brokerage account rather than an IRA. Taxpayer A indicates that Individual L did not code the transmittal as an IRA which resulted in Amount D not being rolled over into another IRA at Company S within 60 days. Taxpayer A states that it was her intention to rollover Amount D to an IRA with Company S and that she believed that such amount had been rolled over to an IRA at Company S even though no documentation has been submitted that shows that an IRA was established or attempted to be established at Company S either prior to the distribution from IRA X or within 60 days after Amount D had been deposited into Account F.

In a letter dated December 22, 2006, addressed to Taxpayer A, Individual M, a senior vice president of Company S, under penalties of perjury, acknowledged that a representative of Company S, Individual L, completed the Company H "Surrender Request Form" requesting that the distribution from IRA X be wired to Company S. Individual M stated that the representative, Individual L, made a mistake or error in not realizing that the distribution was from an IRA. Individual M states that the box in Section F, line 2, "Direct Transfer-IRA to IRA" should have been checked indicating a trustee to trustee rollover, but that Box 3 of the "Surrender Request Form" was checked resulting in the IRA being wired in error directly to a taxable account. The completed "Surrender Request Form" was then forwarded to Taxpayer A for execution. Individual M further states that it was Taxpayer A's intent to have the proceeds from the IRA annuity directly transferred to a self-directed IRA at Company S, and that Company S's signature on the last page of the Surrender Request Form reinforces the intent to have the funds directly transferred to an IRA due to the fact that Company S would not be required to sign off on a full distribution of an IRA annuity.

200719019

In a letter to Taxpayer A from Company S dated February 12, 2007, Individual M further states, under penalties of perjury, that Individual L failed to establish an IRA for Taxpayer A as required by the internal procedures of Company S, and as a result of not establishing an IRA (per those procedures), Taxpayer A was unable to roll over the IRA X distribution from Company H to Company S within the 60-day rollover requirement.

Taxpayer A asserts that her failure to complete a rollover within the 60-day rollover period was due to Individual L's error in not establishing an IRA as she was required to do based upon Company S' internal procedures which resulted in Amount D not being rolled over into an IRA within 60 days of being distributed from IRA X. Taxpayer A further asserts that she has not used or withdrawn any of Amount D since it has been deposited in Account F, as supported by Account F monthly statements.

Based upon the foregoing facts and representations, you request that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertions that she failed to complete a rollover of Amount D to an IRA within the 60-day rollover period because of the errors committed by Company S.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

200719019

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions regarding this letter, please contact
SE:T:EP:RA:T:2.

Sincerely yours,

(signed) **JOYCE E. FLOYD**
Joyce E. Floyd, Manager
Employee Plans Technical Group 2

Enclosures:
Deleted copy of letter ruling
Notice 437